

Easternwood PL4



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Richard F. Guantone - Living Quarters Allowance
for a Sailboat

File: B-226041

Date: December 15, 1987

DIGEST

Agency heads, under statutorily authorized regulations, issued pursuant to the President's authority delegated to the Secretary of State, have discretion to grant their overseas employees a living quarters allowance which provides the cost of rent and utilities for "suitable, adequate, living quarters" when government quarters are not provided. Since the regulations do not further define "suitable, adequate, living quarters," the Secretary of Labor may determine that a privately owned sailboat used by one of his employees as living quarters qualifies for a full living quarters allowance, although the Secretary of State concludes that a sailboat is not suitable, adequate quarters for the purpose of the full allowance for one of his employees.

DECISION

The question in this case is whether the Department of Labor may grant a full living quarters allowance to its employee, Richard F. Guantone, while he was living on a sailboat he purchased during his 1-year tour of duty for the Department of Labor in Nassau, Bahamas, even though the Department of State would not grant such an allowance for a sailboat for its employees under the controlling regulations.^{1/} We conclude that the discretion allowed agency heads under the regulations permits the Secretary of Labor to grant a full living quarters allowance to Mr. Guantone if the Secretary so chooses.

^{1/} This responds to a request for a decision from the Assistant Secretary for Administration and Management, Department of Labor.

BACKGROUND

Mr. Guantone arrived in Nassau September 19, 1985, as the Department of Labor's educational specialist to assist in a project of technical assistance between the Commonwealth of the Bahamas and the Department of Labor. Since he was not provided government quarters, he requested and received approval from the Department of Labor's project director and the Department of State's Embassy Administrative Officer to purchase a sailboat as his residence that would also qualify for a full living quarters allowance. By early December Mr. Guantone had purchased a 37-foot sailboat and filed the necessary forms for a living quarters allowance with the Embassy's Administrative Officer. The sailboat is described as having an engine in addition to sails and having full facilities for use as living quarters, including a galley, head and sleeping quarters.

A representative of the Department of State's Allowances Section in Washington, D.C., telephoned Mr. Guantone on December 20, 1985, to inform him that it was their view that the rent portion of a living quarters allowance for a sailboat should not be authorized but that the utilities portion of the allowance could be paid. Mr. Guantone immediately communicated his concerns to the Department of Labor in Washington, and on January 6, 1986, the Department authorized a full living quarters allowance for Mr. Guantone. However, on January 10 this authorization was rescinded, and only the utilities portion was authorized, pending resolution of the dispute. Between January and April, several cables between the Department of Labor and the Department of State and between internal units of the Department of State discussed whether Mr. Guantone should be granted a full or partial living quarters allowance. These documents indicate that while the Department of State has authorized the full allowance for an unpowered houseboat used as living quarters by one of its employees, it has denied the rent portion but authorized a portion of the allowance for utilities and slip rental for one of its employees who used a sailboat as quarters. The Department was apparently attempting to distinguish between a boat designed primarily to be used as living quarters and one designed primarily to be used for recreation.

By letter of April 24, 1986, the Deputy Assistant Secretary for Operations of the Department of State finally advised the Department of Labor that he believed only the utilities portion of the allowance should be paid because Mr. Guantone's sailboat was appropriately classified as a recreational vessel rather than living quarters and that any reimbursement for the rent portion of a living quarters allowance that goes beyond the generally understood meaning

of quarters as living accommodations was not proper. The Deputy Assistant Secretary indicated that the rent portion of the allowance was not meant to be used as a means of subsidizing employees for their personal recreational needs or desires. Because of this recommendation against granting a full living quarters allowance, the Department of Labor has suspended its determination regarding the allowance and has referred the matter here as suggested by the Deputy Assistant Secretary, asking our decision upon Mr. Guantone's entitlement.

ANALYSIS AND CONCLUSION

When government quarters are not provided without charge to an employee in a foreign area, a living quarters allowance may be granted to the employee "* * * for rent, heat, light, fuel, gas, electricity, and water * * *" in accord with regulations prescribed by the President governing, among other things, the respective rates at which payments are made, and other related matters. 5 U.S.C. §§ 5922(c) and 5923(2) (1982). The purpose of the law which originated the living quarters allowance (as well as other related allowances and differentials) was to improve and strengthen government overseas activities by establishing a uniform system for compensating all government employees in overseas posts, irrespective of the agency by which they were employed. While Congress recognized that conditions of employment might not justify extending all of the benefits of the allowances and differentials to all employees, it did not wish to deny these benefits solely because of the lack of statutory authority where the conditions of employment of the employees of different agencies might be substantially the same. Charles E. Brookshire, B-196809, May 9, 1980.

The President delegated to the Secretary of State his regulatory authority, which has been exercised in the Standardized Regulations (Government Civilians, Foreign Areas). Our decisions have noted that the implementing Standardized Regulations followed the intent of the law by bestowing upon heads of agencies considerable discretion in the granting of a living quarters allowance and requiring them to withhold payment altogether when in their judgment circumstances warranted. These regulations also authorize heads of agencies to issue further implementing regulations. Joseph P. Carrigan, 60 Comp. Gen. 243 (1981). The advice of the Deputy Assistant Secretary for Operations, Department of State, to the Department of Labor, was in accord with this analysis when he stated:

"* * * Allowances under the Standardized Regulations (Government Civilians, Foreign Areas) must be authorized and granted by the appropriate

officials within each U.S. Government agency. These officials are responsible for the interpretation of law and regulations and, of course, may seek advice from regulatory authorities and their own legal staffs."

Each agency's discretion, however, must be exercised within the provisions of the Standardized Regulations. See Standardized Regulations (Government Civilians, Foreign Areas), section 013. We must now examine their application to a sailboat.

When the quarters occupied by an overseas employee are owned by that employee, section 136 of the Standardized Regulations allows an amount of up to 10 percent of the original purchase price of the quarters to be paid to the employee as the "rent" portion of the living quarters allowance each year. The utilities portion for heat, light, fuel, and water is also allowable under section 136, but it is not in question in this case and has been paid. Section 131.3 of the Standardized Regulations states that the living quarters allowance is designed to cover substantially all of the employee's living costs as just described, and section 131.1 states that the allowance is granted for the annual cost of "* * * suitable, adequate, living quarters * * *." The Standardized Regulations do not further define or explain suitable, adequate living quarters.

We see nothing in the Standardized Regulations that either precludes a sailboat from being considered suitable, adequate quarters or that mandates that a sailboat be considered suitable and adequate. We agree with the Deputy Assistant Secretary for Operations that the matter is open for interpretation. We have previously concluded that a sailboat used as a dwelling should be included in the term "mobile home dwelling" under the Federal Travel Regulations and Joint Travel Regulations for the purpose of the sailboat's eligibility for shipment at government expense incident to a transfer.^{2/} On a similar basis we would not object to a sailboat being considered suitable, adequate quarters for the purpose of granting a full living quarters allowance for an overseas employee. Nonetheless, we do not find that the Deputy Assistant Secretary's reasons for a sailboat being considered unsuitable quarters are arbitrary or capricious, and should the Department of State amend the regulations to exclude sailboats, such an exclusion would appear to be within its authority to prescribe the regulations. Since the current regulations do not specifically

^{2/} Lieutenant Christopher J. Donovan, USAF, 62 Comp. Gen. 292 (1983); Adam W. Mink, 62 Comp. Gen. 289 (1983).

define quarters to preclude a sailboat used as a dwelling, however, the Departments of State and Labor can legitimately reach opposite conclusions about the suitability of a sailboat for living quarters based upon their particular circumstances. See Carl M. Bauer, 59 Comp. Gen. 713 (1980), in which two different officials from the Department of the Interior, each supervising a separate entity within the Department, were allowed to set two different rates for an education allowance^{3/} for their respective employees in the same geographical overseas area.

Since the Department of Labor has not yet determined whether a sailboat is suitable, adequate quarters for the purpose of granting the rent portion of a living quarters allowance, we are returning the case to the Department to make that determination within its discretion. Mr. Guantone's reimbursement should be governed accordingly.

for 
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^{3/} An education allowance is related to the living quarters allowance by coming from the same originating statute and by being further defined by the Secretary of State in the Standardized Regulations. Considerable discretion is accorded to agency heads in granting both allowances.